

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

SONY MUSIC ENTERTAINMENT, *et al.*,

Plaintiffs,

v.

COX COMMUNICATIONS, INC., *et al.*,

Defendants.

Case No. 1:18-cv-00950-LO-JFA

DECLARATION OF JEFFREY M. GOULD

I, Jeffrey M. Gould, hereby declare pursuant to 28 U.S.C. § 1746 that the following statements are true and correct to the best of my personal knowledge and belief:

1. I am Senior Counsel at Oppenheim + Zebtrak, LLP, and am admitted to practice law in the District of Columbia, among other jurisdictions. I am counsel for Plaintiffs in the above-captioned case.

2. I submit this declaration in support of Plaintiffs' Omnibus Motion in Limine.

3. A true and correct copy of the Court's summary judgment opinion in *BMG v. Cox*, (*BMG* ECF No. 703), is attached hereto as **Exhibit 1**. Pertinent factual findings have been highlighted.

4. A true and correct copy of a March 11, 2010 slide presentation titled "Education Current Examples, (DX0074, Bates No. COX_SONY_00519178) is attached hereto as **Exhibit 2**. Cox produced this document to Plaintiffs on March 1, 2019. Slides 21 and 22 are the primary subject of Plaintiffs' motion concerning this presentation.

5. A true and correct copy of excerpts from the June 4, 2019 deposition transcript of Randall Cadenhead is attached hereto as **Exhibit 3**.

6. A true and correct copy of excerpts from the April 25, 2019 deposition transcript of Matthew Carothers, Cox's 30(b)(6) designee, is attached hereto as **Exhibit 4**.

7. A true and correct copy of a March 9-10, 2010 email chain between Brent Beck and Randall Cadenhead (DX0140, Bates No. COX_SONY_00974461) is attached hereto as **Exhibit 5**. Cox produced this document to Plaintiffs on the last day of discovery, July 2, 2019.

8. A true and correct copy of the Court's Nov. 25, 2015 Order in *BMG v. Cox* granting BMG's motion in limine to exclude certain evidence and argument (*BMG* ECF No. 691) is attached hereto as **Exhibit 6**.

9. A true and correct copy of excerpts from the December 10, 2015 transcript of the trial in *BMG v. Cox* is attached hereto as **Exhibit 7**.

10. A true and correct copy of excerpts from the June 5, 2019 deposition transcript of Brent Beck, Cox's 30(b)(6) designee, is attached hereto as **Exhibit 8**.

11. A true and correct copy of a July 25, 2019 email chain between Jeffrey Gould and Thomas Kearney is attached hereto as **Exhibit 9**.

12. A true and correct copy of excerpts from the Rebuttal Expert Report of Lynne J. Weber, Ph.D. (DX0171) is attached hereto as **Exhibit 10**.

13. A true and correct copy of excerpts from the Rebuttal Expert Report of Kevin C. Almeroth, Ph.D. (DX0169) is attached hereto as **Exhibit 11**.

14. A true and correct copy of excerpts from the Report of Christian Tregillis (DX0257) is attached hereto as **Exhibit 12**.

15. A true and correct copy of the Court's August 9, 2018 Order in *BMG v. Cox* (BMG ECF No. 998) is attached hereto as **Exhibit 13**.

16. A true and correct copy of excerpts from the November 20, 2015 hearing transcript in *BMG v. Cox* (BMG ECF No. 676) is attached hereto as **Exhibit 14**.

17. A true and correct copy of excerpts from the October 30, 2015 hearing transcript in *BMG v. Cox* (BMG ECF No. 510) is attached hereto as **Exhibit 15**.

18. A true and correct copy of Cox's Acceptable Use Policy (DX0102) is attached hereto as **Exhibit 16**.

19. The '236 Spreadsheet (DX0100, Bates No. MM000236) has been the subject of several prior motions by Cox, including its discovery sanctions motion and aspects of summary judgment and Daubert briefing. The '236 Spreadsheet is large, by both volume and physical size as it contains more than 56,000 entries spanning four separate worksheets. Accordingly, the Court has at least twice authorized Cox, with Plaintiffs' consent, to submit the '236 Spreadsheet in electronic form. ECF No. 271, 343. The same applies to the '431 Spreadsheet (DX0141, Bates No. Plaintiffs_00286431). To avoid burdening the Court with yet another motion seeking an exemption from ECF filing and re-submitting yet another voluminous exhibit outside of ECF, Plaintiffs respectfully refer the Court to ECF Nos. 239-6 (Ex. I); 329-1 (Exs. 37, 39); 302-8 (Ex. G), submitted by Cox on portable drives, for native copies of the complete '236 Spreadsheet and '431 Spreadsheet. For the Court's convenience, Plaintiffs also submit here as **Exhibit 17** a true and correct copy of Exhibit G to the Declaration of Diana Hughes Leiden (ECF No. 239-5), submitted in support of Cox's sanctions motion, containing a screenshot of columns A-T of the '236 Spreadsheet and columns A-S of the '431 Spreadsheet. I have reviewed these screenshots and confirm that they accurately reflect the columns in the '236 Spreadsheet and '431 Spreadsheet.

20. I reviewed the '236 Spreadsheet to determine how many entries include information in the following fields: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21. A true and correct copy of excerpts from the July 2, 2019 deposition transcript of Slawomir Paszkowski, MarkMonitor's 30(b)(6) designee, is attached hereto as **Exhibit 18**.

22. A true and correct copy of excerpts from the June 10, 2019 deposition transcript of Steven Marks, the Recording Industry Association of America's Rule 30(b)(6) designee, is attached hereto as **Exhibit 19**.

23. A true and correct copy of excerpts from the June 21, 2019 deposition transcript of Jill Lesser, the former executive director of the Center for Copyright Information, is attached hereto as **Exhibit 20**.

24. I reviewed and filtered [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] A true and correct copy of [REDACTED]

[REDACTED] is attached hereto at **Exhibit 21**, with the fields described in this paragraph highlighted in yellow.

25. A true and correct copy of the Rebuttal Expert Report of Dr. Nick Feamster is attached hereto as **Exhibit 22**.

26. A true and correct copy of excerpts from the May 6, 2019 deposition transcript of Vance Ikezoye is attached hereto as **Exhibit 23**.

27. True and correct copies of examples of Cox subscribers' email responses to infringement notices, which Cox has included on its exhibit list as DX0399, DX0414, DX0659, DX0665, DX1560, and DX1587, are attached hereto as **Exhibit 24**. Cox has included more than 1,800 such emails on its exhibit list. *See* ECF No. 278-1 (DX 363 through DX 2200).

28. A true and correct copy of Jason Zabek's January 11, 2016 separation agreement (PX0429, Bates No. Zabek-000001) is attached hereto as **Exhibit 25**.

29. A true and correct copy of a Joseph Sikes' January 11, 2016 separation agreement (PX0430, Bates No. SIKES-000016) is attached hereto as **Exhibit 26**.

30. A true and correct copy of excerpts from the July 2, 2019 deposition transcript of Jason Zabek is attached hereto as **Exhibit 27**.

31. A true and correct copy of excerpts from the May 15, 2019 deposition transcript of Joseph A. Sikes is attached hereto as **Exhibit 28**.

32. A true and correct copy of Plaintiffs' witness list (ECF No. 222) is attached hereto as **Exhibit 29**.

33. A true and correct copy of Plaintiffs' Second Amended Rule 30(b)(6) Deposition Notice to Cox is attached hereto as **Exhibit 30**.

34. A true and correct copy Defendants' Witness List (ECF No. 221) is attached hereto as **Exhibit 31**.

35. A true and correct copy of the April 16, 2019 deposition subpoena Cox served upon the Recording Industry Association of America (RIAA) is attached hereto as **Exhibit 32**.

36. A true and correct copy of the April 16, 2019 deposition subpoena Cox served upon Victoria Sheckler is attached hereto as **Exhibit 33**.

37. A true and correct copy of excerpts from the transcript of the May 17, 2019 discovery hearing (ECF No. 157) is attached hereto as **Exhibit 34**.

38. A true and correct copy of the July 29, 2019 trial subpoena Cox served upon Steven Marks, RIAA's corporate designee and former general counsel, is attached hereto as **Exhibit 35**.

39. A true and correct copy of an August 12, 2019 email chain between Jeffrey Gould and Sean Anderson is attached hereto as **Exhibit 36**.

40. A true and correct copy of a July 16, 2019 through September 16, 2019 email chain between Jeffrey Gould and Tom Buchanan is attached hereto as **Exhibit 37**.

41. A true and correct copy of a September 17 through October 15, 2019 email chain between Jeffrey Gould and Tom Buchanan is attached hereto as **Exhibit 38**.

42. A true and correct copy of excerpts from the transcript of the September 27, 2019 hearing (ECF No. 433) is attached hereto as **Exhibit 39**.

43. A true and correct copy of the July 29, 2019 trial subpoena Cox served upon Victoria Sheckler is attached hereto as **Exhibit 40**.

Executed on October 19, 2019 in Washington, District of Columbia.

/s/ Jeffrey M. Gould